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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.14260 of 2021

B.Ramamoorthy

.. Petitioner

Vs

- 1.The Chief Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi - 110 001.
- 2.The Chief Election Officer
Principal Secretary, Secretary to Government
Government of Tamilnadu
Fort St George
Chennai - 600 009.
- 3.The District Election Officer
District Collector
Office of the District Collectorate
Thirupattthur District.
- 4.The Returning Officer
Jolarpet Constituency
Jolarpet, Thirupattthur District.

5.K.C.Veeramani

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records on the file of the 4th respondent in connection with the letter Na.Ka.B2/1575/2021 dated 26.05.2021 and quash the same as illegal, non-application of mind and perverse and consequently direct the 4th respondent to file a complaint of the petitioner dated 03.04.2021 before the competent Judicial Magistrate having jurisdiction against the 5th respondent under Section 125A of the Representation of the People Act read with Section 177 of I.P.C. read with Section 195 Cr.P.C.



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For Petitioner : Mr.P.C.Harikumar

For Respondents : Mr.G.Rajagopalan
Senior Counsel
for M/s.G.R.Associates
for respondents 1 to 4

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This petition was taken up on July 12, 2021 and an order passed. However, the matter was mentioned on behalf of the Election Commission of India at the end of court proceedings on July 12, 2021, indicating that a mistaken submission had been made on behalf of the Commission. Accordingly, the order that was pronounced was not signed and the matter was directed to appear today, upon notice to the petitioner.

2. The petitioner claims to be an ordinary citizen and asserts that one of the respondents, K.C.Veeramani, who was a candidate at the Jolarpet constituency in the Assembly elections conducted in the State in April, had furnished false information with knowledge and reason to believe that such information was false. The petitioner further alleges that the said candidate also concealed material information in course of filing his nomination papers and the affidavits accompanying the same.

3. Veeramani has lost the election. As a consequence, no election petition can be instituted since the allegation is not against the successful candidate. In any event, it is unlikely that any person - even a voter in the relevant constituency - can challenge the election result pertaining to the constituency. Ordinarily, only a failed candidate may take up cudgels on cogent grounds; and, that too only against the successful candidate.

4. The petitioner had made a written representation furnishing details of how the concerned candidate furnished false information and concealed other material information in course of filing his nomination papers and the attendant documents. The Election Commission has dealt with the representation by leaving the petitioner free to lodge a complaint or institute criminal proceedings, if the petitioner was so advised.

5. When the matter was taken up on July 12, 2021, it was submitted on behalf of the Election Commission that in terms of



a circular prevailing from the year 1966, the Election Commission would not institute criminal action in respect of the matters complained of by the petitioner and it would be open to the person who perceived any wrong to have been committed to pursue the matter in accordance with law.

6. Such submission on behalf of the Election Commission necessitated the Court to observe on July 12, 2021 that it was disturbing that the Election Commission would take no action even when it was brought to the notice of such Commission that a candidate had furnished false information or filed a false affidavit or had concealed material information, when such candidate was obliged to truthfully make the fullest disclosure.

7. It appeared to be an anomaly to this court that the constitutional watchdog, exclusively tasked with the job of overseeing Parliamentary and Assembly elections, would turn a blind eye to allegations of false declarations or false affidavits filed before it by a candidate contesting such an election. It seemed completely inappropriate to the Court that the Election Commission would take no steps to ensure the purity and sanctity of the election process or attempt to bring about transparency in how elections were funded.

8. It is now submitted on behalf of the Election Commission that in terms of a more recent circular of September 16, 2020, when anomalies in affidavits filed by a candidate are brought to the notice of the Commission, the Commission would "take cognizance of complaints, which indicate serious omission/commission on the part of the candidate, and refer such matters to the relevant investigating authorities on a case-to-case basis."

9. At a Parliamentary or Assembly election, every candidate at every constituency has to file an affidavit in Form 26 along with the nomination papers. Such affidavit, inter alia, requires the candidate to disclose information pertaining to the candidate's criminal antecedents; assets and liabilities; and, educational qualifications. Section 125-A of the Representation of the People Act, 1951, which was inserted by way of an amendment to the statute in 2002, makes the failure to furnish the information required under Section 33-A of the Act punishable. The provision also mandates that candidates furnishing false information knowing or having reason to believe the same to be false and candidates concealing any information otherwise required to be furnished may be punished with imprisonment for a term which may extend to six months, or with fine, or with both.



10. It is common knowledge that contesting an election is an expensive proposition and the clandestine funding of elections is seen by many experts as the fundamental cause for the industry of corruption that is perceived to prevail in the country. Though limits as to spending may be fixed by the Election Commission, such limits may not be realistic and it is the bounden duty of the constitutional watchdog to ensure that if limits are prescribed, they are adhered to; or realistic limits are set, and spending by candidates is confined to such limits, with a close scrutiny of the accounts being undertaken. Greater judicial notice may be necessary for electoral reforms and cleansing the system to rid it of the perceived large-scale involvement of black money therein.

11. Indeed, a press note of June 16, 2020 issued by the Election Commission refers to the leading Supreme Court judgments instructing that the voter must have relevant information and that false or incomplete information undermines the rights of voters to be fully informed of their political representatives. It is heartening to note that in the press release, the Commission has indicated its decision "to robustly address this challenge to further ensure free, fair and ethical elections in the country."

12. In the light of the present submission of the Election Commission that it will consider the petitioner's representation afresh, the petition may be disposed of at the receiving stage.

13. It is necessary that the Election Commission devises a procedure for dealing with complaints of the present kind. Ideally, a notice should be issued to the relevant candidate and his explanation sought and the matter closed by a reasoned order if the explanation is found suitable or satisfactory. If, however, the explanation is found unsatisfactory, the Election Commission should pursue the matter with full rigour, irrespective of the political allegiance of the relevant candidate.

14. W.P.No.14260 of 2021 is disposed of. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Election Commission of India
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New Delhi - 110 001.

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Principal Secretary, Secretary to Government
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4.The Returning Officer
Jolarpet Constituency
Jolarpet, Thiruppatthur District.

+1CC to Mr.Harikumar & Associates, Advocates SR No.33240

+1CC to M/s.G.R.Associates, Advocates SR No.33239

W.P.No.14260 of 2021

MG (CO)
PR (19/07/2021)